

1                                   **ARIZONA TRANSACTION PRIVILEGE TAX RULING**

2   **TPR 08-\_\_**

3                                   **DRAFT (10/23/08): FOR REVIEW AND COMMENT PURPOSES ONLY**

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5                   **ISSUE**

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7                   Taxation of persons engaged in the business of renting and servicing portable toilets.

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9                   **APPLICABLE LAW**

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11                   Arizona Revised Statutes (A.R.S.) § 42-5071 *Personal property rental classification*,  
12                   imposes the transaction privilege tax on the business of leasing or renting tangible  
13                   personal property for a consideration. The tax base for the classification is the gross  
14                   proceeds of sales or gross income derived from the business.

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16                   Arizona Administrative Code (A.A.C.) R15-5-1502 addresses the gross income derived  
17                   by a lessor of tangible personal property and provides:

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19                                   The gross income from the rental of tangible personal property includes  
20                                   charges for installation, labor, insurance, maintenance, repairs, pick-up,  
21                                   delivery, assembly, set-up, personal property taxes, and penalty fees even  
22                                   if these charges are billed as separate items, unless a specific statutory  
23                                   exemption, exclusion, or deduction applies.

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25                   **LEGAL REFERENCES**

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27                   *State Tax Commission v. Peck*, 106 Ariz. 394, 476 P.2d 849 (1970) addresses the  
28                   leasing or renting of tangible personal property for a consideration. The Arizona  
29                   Supreme Court held that exclusive use and control of the tangible personal property for  
30                   a fixed period of time for a specified consideration are the determining factors in finding  
31                   a taxable lease or rental.

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33                   In *State Tax Commission v. Holmes & Narver, Inc.*, 113 Ariz. 165, 548 P.2d 1162  
34                   (1976), the Arizona Supreme Court articulated a three part test to determine the tax  
35                   treatment of otherwise nontaxable service activities when they are intertwined with a  
36                   taxable business activity. The court stated:

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38                                   Where it can be readily ascertained without substantial difficulty which  
39                                   portion of the business is for non-taxable professional services..., the  
40                                   amounts in relation to the company's total taxable Arizona business are  
41                                   not inconsequential, and those services cannot be said to be incidental to  
42                                   the...business, the professional services are not merged for tax purposes  
43                                   into the taxable...business and are not subject to taxation. *Id.* at 169,  
44                                   1166.

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46                   **RULING**

## ARIZONA TRANSACTION PRIVILEGE TAX RULING

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A person engaged in the business of renting and servicing portable toilets is subject to Arizona's transaction privilege tax under the personal property rental classification. During the rental period, the customer has exclusive use and control of the portable toilet. This use and control constitutes a rental of personal property. The tax base for this business activity is the gross proceeds of sales or gross income derived from the business of renting portable toilets, including the servicing of the portable toilets. Regardless of whether the service charges are separately stated, there is no deduction for installation, labor, maintenance, pick-up, delivery, or other services associated with the business of renting portable toilets.<sup>1</sup>

For situations where a portable toilet rental business provides sanitation services for portable toilets not rented from their business, the income from providing these sanitation services will not be subject to the transaction privilege tax only if this activity qualifies as a separate line of business. In such a case, the sanitation services are nontaxable as a service business activity. This service activity will be considered a separate line of business and, therefore, not subject to taxation if: (1) it can be readily ascertained without substantial difficulty which portion of the business is for the non-taxable services; (2) the amounts in relation to the company's total taxable Arizona business are not inconsequential; and (3) the services cannot be said to be incidental to the business. *Holmes & Narver, Inc.*, 113 Ariz. at 169, 548 P.2d at 1166. However, if the service activity fails to satisfy the three-prong test under *Holmes & Narver*, all gross proceeds or income, including income from providing sanitation services for portable toilets not rented from the business, will be subject to the transaction privilege tax under the personal property rental classification.

The rental of portable toilets to a prime contractor is subject to the transaction privilege tax under the personal property rental classification.

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<sup>1</sup> This portion of the ruling will be effective from \_\_\_\_, 2008.